

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,) CR-18-00172 BLF
)
PLAINTIFF,) SAN JOSE, CALIFORNIA
)
VS.) APRIL 26, 2021
)
MICHAEL KAIL,) VOLUME 12
)
DEFENDANT.) PAGES 2534-2549
)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE BETH LABSON FREEMAN
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE
BY: COLIN C. SAMPSON
DANIEL KALEBA
450 GOLDEN GATE AVENUE, BOX 36055
SAN FRANCISCO, CALIFORNIA 94102

FOR THE DEFENDANT: JAYNE LAW GROUP
BY: JULIA M. JAYNE
483 9TH STREET, SUITE 200
OAKLAND, CALIFORNIA 94607

ALSO PRESENT: LAURIE WORTHEN

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

1 SAN JOSE, CALIFORNIA

APRIL 26, 2021

2 P R O C E E D I N G S

3 (COURT CONVENED AT 9:04 A.M.)

4 (JURY IN AT 9:04 A.M.)

5 THE COURT: GOOD MORNING, EVERYONE. PLEASE BE
6 SEATED. WELCOME. I HOPE YOU HAD A NICE WEEKEND.

7 SO TODAY WE ARE GOING TO SHIFT GEARS, AS WE SAID ON
8 FRIDAY, AND I'M GOING TO GIVE THE CASE TO YOU FOR
9 DELIBERATIONS. YOU'VE SAT HERE QUIETLY AS REQUIRED FOR THE
10 LAST TWO AND A HALF WEEKS LISTENING AND VIEWING THE EVIDENCE,
11 AND AS I'VE INSTRUCTED YOU ALL ALONG, YOU COULD NOT DISCUSS THE
12 CASE WITH ANYONE, EVEN AMONG YOURSELVES, UNTIL THE CASE WENT TO
13 YOU FOR DELIBERATION. SO THAT'S WHAT WE'RE GOING TO DO TODAY.

14 IT WILL BE THE 12 OF YOU. OUR ALTERNATES ARE ON STANDBY,
15 BUT YOU'RE ALL HERE AND THAT'S GREAT.

16 AND JUST FOR THE RECORD, ALL COUNSEL AND PARTIES ARE
17 PRESENT AS WELL.

18 WHAT I WANT TO DO THIS MORNING IS TO GO OVER WITH YOU WHAT
19 YOU'RE GOING TO DO IN THE JURY ROOM. AS I SAID, I'LL GIVE YOU
20 THE JURY INSTRUCTIONS, BUT THEY'RE PRETTY FORMAL AND THEY DON'T
21 REALLY GET INTO THE NITTY GRITTY.

22 SO YOU'RE GOING TO BE USING THE SAME COURTROOM THAT YOU'VE
23 BEEN IN FOR YOUR DELIBERATION, WHICH WILL GIVE YOU ENOUGH ROOM
24 TO SPREAD OUT.

25 TIFFANY, DO WE HAVE A WHITE BOARD, A PORTABLE ONE?

1 THE CLERK: YES, YOUR HONOR.

2 THE COURT: AND IT'S IN THERE?

3 THE CLERK: IT'S NOT IN THERE YET, BUT I WILL GET IT.

4 THE COURT: SO YOU SHOULD ARRANGE YOURSELVES IN THE
5 COURTROOM IN A WAY THAT'S GOING TO HELP YOU HAVE CONVERSATION
6 WITH EACH OTHER, AND I DON'T REALLY KNOW WHAT THAT'LL BE.

7 TYPICALLY YOU'D BE IN A JURY ROOM WITH A BIG TABLE THAT YOU'D
8 ALL SIT AROUND, AND I DON'T HAVE THAT FOR YOU.

9 BUT YOU ARE FREE TO USE THE TABLES THAT ARE THERE AND TO
10 SIT IN ANY WAY THAT MAKES YOU COMFORTABLE. I'M ONLY GOING TO
11 RECOMMEND THAT YOU ALL BE ABLE TO HEAR EACH OTHER, AND I DON'T
12 KNOW, AGAIN -- I'VE HAD THE MICROPHONES IN HERE, AND IF FOR ANY
13 REASON YOU NEED A MICROPHONE, LET US KNOW AND WE'LL BRING ONE
14 IN. BUT CHANCES ARE, YOU WON'T.

15 THAT'S MY NORMAL --

16 ARE THEY IN JUDGE DEMARCHI'S COURTROOM OR MINE?

17 THE CLERK: JUDGE DEMARCHI'S.

18 THE COURT: OKAY. SO THERE SHOULD BE PLENTY OF ROOM
19 FOR YOU.

20 WHAT YOU WILL FIND, ONCE YOU'RE IN THAT JURY DELIBERATION
21 ROOM, IS THAT IT'S ONLY THE 12 OF YOU WHO ARE THERE AND NO ONE
22 ELSE CAN ENTER WHILE YOU'RE DISCUSSING THE CASE.

23 SO WHEN YOU GET STARTED, MS. SALINAS-HARWELL IS GOING TO
24 NEED TO BRING YOU THE THINGS YOU NEED AND GET THEM SET UP FOR
25 YOU. YOU'RE NOT TO TALK ABOUT THE CASE AT ALL WHILE SHE'S

1 THERE.

2 BUT SHE'S GOING TO BRING TO YOU THE EVIDENCE.

3 WILL THAT BE ELECTRONIC OR IN PAPER?

4 THE CLERK: ELECTRONIC, YOUR HONOR.

5 THE COURT: OKAY. SO SHE'S GOING TO GET YOU SET UP
6 WITH A COMPUTER THAT WILL ALLOW YOU TO VIEW THE EVIDENCE. AND
7 IF YOU HAVE ANY DIFFICULTY WITH THAT, LET ME KNOW AND WE
8 WILL -- WE'LL MAKE SURE THAT YOU HAVE ACCESS, BECAUSE IF THIS
9 IS -- AS YOU SAW DURING THE TRIAL, THERE'S A LOT OF EVIDENCE
10 AND IT'S UP TO YOU HOW AND WHEN YOU VIEW THE EVIDENCE.

11 WHEN YOU GO IN THE JURY ROOM, THOSE DOORS ARE GOING TO BE
12 CLOSED AND A COURT SECURITY OFFICER WILL BE POSTED OUTSIDE THE
13 DOOR TO THE HALLWAY. NO -- AS I SAID, NO ONE CAN ENTER WHILE
14 YOU'RE DELIBERATING.

15 IT ALSO MEANS THAT NOBODY CAN LEAVE WHILE YOU'RE
16 DELIBERATING. SO YOU CAN'T LET ONE PERSON GO OUT IN THE
17 HALLWAY TO TAKE A PHONE CALL WHILE THE REST OF YOU TALK ABOUT
18 THE CASE.

19 BUT YOU CAN TAKE BREAKS WHENEVER YOU WANT. SO WHILE
20 YOU'RE DELIBERATING, YOU SHOULD TAKE BREAKS AS YOU SEE FIT, AND
21 THE SCHEDULE IS ACTUALLY YOUR OWN TO SET. BUT IF SOMEBODY
22 NEEDS TO BE EXCUSED FOR A FEW MINUTES, JUST TAKE A BREAK. STOP
23 TALKING ABOUT THE CASE. EVERYONE GETS TO WALK AROUND FOR A FEW
24 MINUTES AND THEN COME BACK.

25 BUT WHILE YOU'RE IN THE JURY ROOM, NO ONE CAN USE CELL

1 PHONES, TABLETS, OR OTHER ELECTRONIC DEVICES.

2 NOW, MOST JUDGES CONFISCATE YOUR PHONES AND TABLETS WHILE
3 YOU DELIBERATE. I DON'T DO THAT. BUT I COUNT ON ALL OF YOU TO
4 KEEP AN EYE ON YOUR FELLOW JURORS TO MAKE SURE THAT NO ONE IS
5 ACCESSING THEIR PHONES OR ELECTRONIC DEVICES DURING
6 DELIBERATIONS. I CAN'T HAVE YOU CHECKING SOMETHING ON THE
7 INTERNET THAT MIGHT BE ABOUT THE CASE.

8 SO THIS IS A REALLY IMPORTANT THING. IF ANYONE REPORTS TO
9 ME THAT THERE'S A JUROR WHO'S USING A CELL PHONE DURING
10 DELIBERATIONS, I WILL CONFISCATE ALL YOUR PHONES WHILE YOU'RE
11 DELIBERATING. I'VE BEEN DOING THIS FOR 20 YEARS. I'VE NEVER
12 HAD TO DO THAT, SO I KNOW YOU WON'T BE THE FIRST ONES.

13 BUT BY THE SAME TOKEN, IF YOU HAVE SOMETHING AT HOME OR AT
14 WORK THAT YOU'RE WAITING FOR, JUST TAKE A BREAK. I'M NOT
15 RESTRICTING YOUR ACCESS. IT'S JUST IN THE JURY ROOM.

16 SO THAT WILL BE FINE AND YOU'LL WORK THAT OUT WITH YOUR
17 PRESIDING JUROR TO TAKE A BREAK BECAUSE, YOU KNOW, YOU'VE BEEN
18 HERE FOR TWO WEEKS, YOU'VE HANDLED IT BEAUTIFULLY. I'M SURE
19 EVERYTHING WILL BE THE SAME.

20 NOW, THE FIRST THING, AS YOU HEARD IN THE INSTRUCTIONS,
21 THAT YOU'RE GOING TO DO IN THE JURY ROOM IS TO PICK YOUR
22 PRESIDING JUROR. THERE ARE NO RULES ON WHO CAN SERVE AS A
23 PRESIDING JUROR. ANY OF THE 12 OF YOU IS ELIGIBLE. AND THERE
24 ARE NO RULES ON HOW YOU PICK THE PRESIDING JUROR.

25 BUT LET ME TELL YOU THAT IT'S VERY IMPORTANT. I'M SURE

1 YOU'VE ALL SAT IN MEETINGS WHERE YOU'VE HAD GOOD COMMITTEE
2 CHAIRS AND REALLY CRUMMY ONES, AND IT'S NO FUN TO BE ON A
3 COMMITTEE WITH A CRUMMY COMMITTEE CHAIR.

4 SO THINK OF IT THAT WAY. YOU WANT -- I RECOMMEND THAT YOU
5 PICK SOMEONE WHO ACTUALLY WANTS TO DO THE JOB, WHO WILL MANAGE
6 THE DISCUSSION AMONG THE JURORS, AND ONE THING THAT I HOPE
7 YOU'LL KEEP IN MIND IS THAT YOU PICK SOMEONE WHO WILL BE REALLY
8 AWARE OF JURORS WHO WANT TO SAY SOMETHING, BUT MIGHT GET
9 DROWNED OUT BY ANOTHER JUROR WHO'S A LITTLE BIT MORE VOCAL.

10 AND SO A GOOD PRESIDING JUROR WILL NOTICE THAT HAND GO UP
11 A LITTLE BIT AND MAYBE NOT AGAIN AND MAKE A MENTAL NOTE AND
12 CALL ON THAT PERSON. SO JUST TRY TO KEEP THAT IN MIND.

13 THERE'S -- AS YOU HEARD IN CLOSING ARGUMENTS, THERE ARE A
14 NUMBER OF COUNTS, SO YOUR ORGANIZATION WILL BE IMPORTANT AS
15 WELL.

16 BUT YOU CAN PICK ANYONE YOU WANT, AND THAT PRESIDING JUROR
17 WILL LEAD YOUR DISCUSSIONS.

18 NOW, WHILE YOU'RE IN THE JURY ROOM, I'M GOING TO SEND YOU
19 A NUMBER OF THINGS. I'M GOING TO SEND YOU THE EVIDENCE,
20 CERTAINLY. I'M GOING TO SEND YOU THE JURY INSTRUCTIONS AND THE
21 VERDICT FORM.

22 NOW, WITH THE JURY INSTRUCTIONS, I GENERALLY SEND IN TWO
23 COPIES. YOU CAN HAVE AS MANY COPIES AS YOU WANT, BUT YOU HEARD
24 ME READ THEM, IT'S A PRETTY THICK STACK.

25 IF THERE IS ANY PARTICULAR INSTRUCTION THAT MORE JURORS

1 ARE WANTING TO LOOK AT THEMSELVES, YOU JUST LET ME KNOW AND
2 I'LL BE GLAD TO COPY IT. IF YOU WANT 12 FULL SETS, I'LL DO
3 THAT. IF YOU WANT 12 COPIES OF A PARTICULAR INSTRUCTION, I'LL
4 DO THAT AS WELL. I TRY NOT TO SEND IN TOO MANY PILES OF PAPER
5 BECAUSE I DON'T REALLY KNOW WHAT YOU WANT.

6 I'M ALSO GOING TO GIVE -- THE ONE THING I DO SEND IN FOR
7 EVERYONE IS YOUR OWN PERSONAL COPY OF THE VERDICT FORM. I WANT
8 TO BE SURE THAT EACH OF YOU CAN READ EXACTLY WHAT YOU'LL BE
9 VOTING ON.

10 SO THE PRESIDING JUROR WILL HAVE THE ORIGINAL OF THE
11 VERDICT FORM, WHICH WILL BE IN A BINDER. ONLY THE PRESIDING
12 JUROR CAN MARK THAT FORM AND YOU WILL ULTIMATELY SIGN IT WHEN
13 YOU'RE DONE IF YOU REACH A VERDICT.

14 BUT YOU'RE GOING TO BE VOTING. SO I'M GOING TO GO OVER
15 THIS WITH YOU IN JUST A MOMENT, AND I WILL BE GIVING EACH OF
16 YOU A COPY OF THIS.

17 I'M ALSO GOING TO BE GIVING YOU SOME BLANK FORMS FOR
18 QUESTIONS TO ASK. IF YOU HAVE QUESTIONS -- IT COULD BE, WOULD
19 YOU SEND US MORE PAPER AND PENCILS? IT COULD BE A QUESTION
20 ABOUT THE JURY INSTRUCTIONS. I NEED YOU TO WRITE IT DOWN.

21 SO THE FORM, IN THE TOP HALF, IS FOR YOUR QUESTION. I'M
22 GOING TO IT LIMIT ONE QUESTION PER FORM JUST SO THAT I CAN BE
23 SURE THAT I RESPOND TO EVERYTHING.

24 THE BOTTOM HALF IS FOR MY ANSWER. MOST OF THE TIME I CAN
25 ANSWER YOUR QUESTION IN WRITING AND I DON'T NEED TO BRING YOU

1 BACK TO THE COURTROOM.

2 SO YOU'LL SEND OUT THE QUESTION, AND IF YOU SEND OUT TWO
3 OR THREE AT A TIME, THAT'S FINE, TOO. I'M GOING TO GIVE YOU
4 THREE OR FOUR BLANK FORMS. I DON'T -- YOU COULD HAVE MORE
5 QUESTIONS, YOU CAN HAVE FEWER, AND IF YOU RUN OUT OF FORMS,
6 JUST ASK FOR MORE AND WE'LL BE GLAD TO SEND THEM IN.

7 IF YOU HAVE A QUESTION TO SEND OUT, I WILL HAVE TO BRING
8 THE LAWYERS IN, WE WILL GO OVER THE QUESTION AND GO OVER THE
9 RESPONSE. IF I CAN RESPOND IN WRITING, I'LL DO THAT AND SEND
10 IT BACK.

11 IF IT'S THE KIND OF QUESTION THAT REQUIRES YOU TO COME
12 BACK IN THE COURTROOM, WE'LL DO IT THAT WAY.

13 WHILE WE'RE WORKING ON THE ANSWER, PLEASE CONTINUE YOUR
14 DELIBERATIONS.

15 OR IF IT'S NEAR YOUR NORMAL BREAK, GO AHEAD AND TAKE YOUR
16 BREAK. BUT I DON'T WANT YOU JUST SITTING IN THE JURY ROOM
17 WAITING FOR ME.

18 IF IT'S A QUESTION THAT'S GOING TO TAKE A PARTICULARLY
19 LONG TIME, I'LL LET YOU KNOW THAT SO THAT YOU CAN PLAN YOUR
20 DELIBERATIONS AS WELL.

21 LET'S SEE. ALL RIGHT. SO LET ME TALK TO YOU ABOUT THE
22 VERDICT FORM.

23 YOU HEARD IN THE INSTRUCTIONS THAT THERE ARE A NUMBER OF
24 COUNTS. EACH -- SO THE VERDICT FORM IS ACTUALLY MANY PAGES. I
25 KNOW YOU CAN'T SEE THIS. I'M HOLDING THIS AND IT'S TOO FAR

1 AWAY FOR YOU.

2 AS YOU HEARD IN THE JURY INSTRUCTIONS, IN ORDER TO RENDER
3 A VERDICT OF EITHER GUILTY OR NOT GUILTY, ALL 12 OF YOU MUST
4 AGREE.

5 IF YOU DON'T ALL AGREE EITHER WAY, THEN YOU CAN'T MARK
6 THAT QUESTION. YOU DON'T HAVE A VERDICT.

7 AND SO THE RESULT OF NOT BEING UNANIMOUS FOR GUILTY IS NOT
8 AUTOMATICALLY NOT GUILTY. YOU NEED TO BE UNANIMOUS FOR NOT
9 GUILTY AS WELL.

10 SO KEEP THAT IN MIND.

11 YOU HEARD THE UNANIMITY INSTRUCTION I GAVE YOU, AND I KNOW
12 IT WAS FRIDAY, YOU'LL SEE IT IN THE PACKET, IT'S HARD TO
13 REMEMBER.

14 BUT THERE ARE TWO PARTS TO MANY OF THE COUNTS. EACH ONE
15 REQUIRES, IF YOU CAN, TO REACH A UNANIMOUS VERDICT. AND IF YOU
16 CAN'T, THEN YOU MOVE ON.

17 NOW, IN THIS CASE, FOR -- LET ME JUST GET THE RIGHT
18 NUMBER. FOR QUESTIONS 1 THROUGH 22, IF YOU -- YOU CAN DO ANY
19 OF THOSE -- YOU CAN DO THOSE IN ANY ORDER YOU WANT. THEY'RE
20 EACH SEPARATE. BUT YOU DON'T HAVE TO ANSWER 1 IN ORDER TO GET
21 TO 2. YOU DON'T HAVE TO ANSWER 2 IN ORDER TO GET TO 3. THEY
22 ARE INDEPENDENT.

23 SOMETIMES WHAT HAPPENS WITH JURIES IS THEY START WITH 1,
24 MAYBE THEY -- YOU DON'T REACH A VERDICT. YOU PUT IT ASIDE.
25 YOU GO TO ANOTHER ONE. YOU'RE GOING TO HAVE TO GO BACK TO IT,

1 AND YOUR FOREMAN IS GOING TO HAVE TO BE REALLY ORGANIZED TO
2 MAKE SURE YOU UNDERSTAND THAT. BUT YOU CAN ANSWER THESE IN ANY
3 ORDER THAT YOU WANT.

4 WHEN YOU GET TO NUMBER 23, THAT ONE YOU'LL READ IN THE
5 INSTRUCTIONS ON MONEY LAUNDERING, READ THE ELEMENTS TO THAT AND
6 HOW THEY RELY ON THE OTHER INSTRUCTIONS IN THE CASE.

7 AND LET ME TELL YOU A LITTLE BIT MORE ABOUT GIVING EACH OF
8 YOU YOUR OWN VERDICT FORM.

9 FIRST OF ALL, THIS IS MANY PAGES. IT'S VERY IMPORTANT
10 THAT EACH OF YOU KNOWS EXACTLY WHAT YOU'RE VOTING ON, SO YOU'LL
11 HAVE IT RIGHT IN FRONT OF YOU.

12 THERE'S ANOTHER REASON, THOUGH, THAT I WANT YOU TO HAVE
13 YOUR OWN VERDICT FORM. WHEN THE JURY ULTIMATELY, AT THE END,
14 IS DONE WITH A COUNT, IF YOU HAVE A VERDICT, I WANT YOU TO MARK
15 IT THE WAY YOU VOTED, THE WAY YOU PERSONALLY VOTED, BECAUSE IF
16 YOU RENDER A VERDICT AND YOU COME BACK HERE INTO THE COURTROOM
17 AND WE READ THE VERDICT, THE PARTIES HAVE THE RIGHT TO HAVE THE
18 JURY POLLED, AND WHAT THAT MEANS IS THAT EACH OF YOU, IN OPEN
19 COURT, WILL TELL ME HOW YOU VOTED ON EACH COUNT SO THAT I CAN
20 BE SURE AND THE PARTIES CAN BE SURE THAT I HAVE A UNANIMOUS
21 VERDICT.

22 I NEED YOU TO BE ABLE TO LOOK AT THIS VERDICT FORM TO KNOW
23 WHAT YOU VOTED AND TO KNOW WHAT -- AND I DO IT -- IT GOES A
24 LITTLE BIT FAST. OTHERWISE WE'D BE HERE ALL DAY. BUT I'M
25 GOING TO READ THE QUESTION AND I'LL ASK YOU, JUROR NUMBER 1, IS

1 THIS YOUR VERDICT, AND YOU'RE GOING TO TELL ME CORRECT, NOT
2 CORRECT BY LOOKING AT HOW YOU VOTED.

3 SO WHEN -- SO KEEP YOUR OWN FORM. SO I'LL SEND IN 12.
4 THE PRESIDING JUROR WILL HAVE A PERSONAL COPY, AS WELL AS THE
5 OFFICIAL ONE, AND THE OFFICIAL ONE, WHEN YOU'RE DONE, IS GOING
6 TO BE DATED AND SIGNED BY THAT PRESIDING JUROR.

7 SO I THINK THAT COVERS EVERYTHING THAT I WANT YOU TO KNOW
8 INFORMALLY.

9 I'M HERE ALL THE TIME. I DO HAVE SOME OTHER HEARINGS THAT
10 GO ON, SO IT COULD BE I HAVE A LITTLE DELAY IN RESPONDING IF
11 I'M IN THE MIDDLE OF SOMETHING ELSE. BUT I WILL QUICKLY
12 DISPOSE OF WHATEVER I'M WORKING ON SO THAT I CAN TEND TO YOUR
13 QUESTIONS AND YOUR NEEDS.

14 AND I THINK, WITH THAT, COUNSEL, I'M GOING TO SEND THE
15 JURY IN TO DELIBERATE AND WE'RE GOING TO -- I THINK WE'VE GOT
16 THINGS PRETTY MUCH READY FOR YOU. SINCE WE ENDED ON FRIDAY,
17 THOSE JURY INSTRUCTIONS, THE VERDICT FORMS, AND THE EVIDENCE --
18 MS. SALINAS-HARWELL WILL SHOW YOU HOW TO USE THE COMPUTER FOR
19 THE EVIDENCE.

20 WILL IT SHOW UP ON THE SCREEN OR WILL IT JUST SHOW ON THE
21 COMPUTER?

22 THE CLERK: YOUR HONOR, WE ACTUALLY HAVE A PROJECTION
23 SCREEN THAT IT'LL SHOW UP ON.

24 THE COURT: GREAT. IS THERE A WAY TO HAVE THE
25 EXHIBITS IN PAPER IF THEY NEED THEM?

1 THE CLERK: IF THEY NEED A SPECIFIC EXHIBIT, I CAN
2 PRINT IT.

3 THE COURT: OKAY. SO IF THERE IS A PARTICULAR PIECE
4 OF EVIDENCE THAT YOU WOULD LIKE TO SEE IN PAPER FORM, LET ME
5 KNOW BY EXHIBIT NUMBER AND WE WILL DO OUR BEST TO GET THAT IN
6 TO YOU SO THAT YOU CAN SEE IT. AND IF YOU HAVE ANY TROUBLE
7 USING THE EQUIPMENT, LET MS. -- LET US KNOW.

8 SO IF YOU HAVE A QUESTION, YOU'LL CONTACT THE COURT
9 SECURITY OFFICER WHO WILL BE SITTING OUTSIDE IN THE HALLWAY
10 HERE AND GIVEN IT TO HIM OR HER TO BRING TO US. AND IF YOU'RE
11 ABOUT TO TAKE A BREAK WHEN YOU GIVE THEM THE QUESTION, LET THEM
12 KNOW THAT.

13 LET THE COURT SECURITY OFFICER KNOW THE SCHEDULE. SO IF
14 YOU'RE TAKING A TEN MINUTE BREAK, LET THEM KNOW IT'S TEN
15 MINUTES. IF YOU'RE GOING FOR LUNCH -- AND I GUESS WE'LL BE
16 BRINGING LUNCH IN.

17 SO IF YOU'RE TAKING AN HOUR BREAK OR HALF HOUR, YOU KNOW,
18 LET THEM KNOW.

19 AND IF YOU'RE -- AND AT THE END OF THE DAY, OF COURSE,
20 YOU'LL LET US ALL KNOW.

21 I'M GOING TO ASK THAT YOU KEEP YOUR DELIBERATIONS TO FULL
22 DAYS SO THAT WE CAN MOVE THROUGH THIS. AND ON THURSDAY, I HAVE
23 NOT HAD COURT FOR THE TRIAL ON THURSDAYS BECAUSE I HAVE OTHER
24 CASES, BUT YOU ARE FREE TO BE HERE ON THURSDAY. SOME OF YOU
25 MAY HAVE MADE OTHER PLANS ASSUMING YOU WEREN'T HERE ON

1 THURSDAYS. I'M NOT ASKING TO YOU CANCEL THAT UNLESS YOU WANT
2 TO. LET ME KNOW, THOUGH, IF YOU'RE NOT GOING TO BE HERE
3 THURSDAY. AS I SAY, I'LL BE HERE. AND MAYBE YOU'LL BE DONE BY
4 THEN. I DON'T KNOW HOW LONG THIS WILL TAKE, AND I DON'T THINK
5 YOU DO, EITHER.

6 SO I THINK THAT'S EVERYTHING. AND I HOPE I'VE -- I HAVE
7 MY LIST, AND I'VE COVERED EVERYTHING. I HOPE THAT THAT'S
8 HELPFUL TO YOU.

9 AND WE WILL ALL BE HERE IN ORDER TO ASSIST YOU IN ANY WAY
10 WE CAN.

11 ALL RIGHT. I'M GOING TO LET YOU TAKE THEM INTO THE JURY
12 ROOM.

13 THE CLERK: YES, YOUR HONOR.

14 (JURY OUT AT 9:22 A.M.)

15 THE COURT: ALL RIGHT. DO YOU ALL HAVE YOUR OWN
16 COPIES OF THE INSTRUCTIONS AND THE VERDICT FORM?

17 MR. SAMPSON: YES, YOUR HONOR.

18 THE COURT: ALL RIGHT. BECAUSE --

19 MR. SAMPSON: WELL, NOT WITH ME RIGHT NOW.

20 THE COURT: NO, NO. BECAUSE TYPICALLY IF QUESTIONS
21 COME UP, THEY'RE ABOUT THE JURY INSTRUCTIONS, SO I WANT TO MAKE
22 SURE YOU HAVE ACCESS TO THEM SO THAT YOU CAN QUICKLY REVIEW
23 THEM. AND --

24 MS. JAYNE: I DON'T KNOW THAT I HAVE A FINAL, FINAL.
25 WE HAD THAT CONFERENCE AND I MARKED UP THE FINAL, BUT I DON'T

1 KNOW THAT I HAVE A FINAL COPY OF IT.

2 MR. SAMPSON: NO. I JUST HAVE THE MARKED UP ONE.

3 THE COURT: WELL, YOU SENT ME A CLEAN COPY.

4 MR. SAMPSON: NO, I -- NOT AFTER THURSDAY.

5 YOUR HONOR SAID YOU WERE GOING TO DO IT.

6 THE COURT: OH, BECAUSE I PULLED SOME THINGS AND I
7 MADE THAT ONE MODIFICATION.

8 OKAY. WELL, WHEN TIFFANY COMES BACK, THEN I GUESS I'LL
9 NEED HER TO MAKE TWO MORE COPIES OF THE JURY INSTRUCTIONS FOR
10 YOU.

11 DO YOU HAVE THE VERDICT FORM?

12 MR. SAMPSON: YES.

13 MS. JAYNE: THAT WE DIDN'T MODIFY, SO I HAVE THE ONE
14 THAT WAS FILED.

15 THE COURT: OKAY. I WILL ASK HER TO DO THAT.

16 OKAY. WELL, IT'S ANYONE'S GUESS AS TO WHAT OUR SCHEDULE
17 IS TODAY. IT BECOMES A DISTRACTING AND DIFFICULT DAY, I
18 CERTAINLY UNDERSTAND THAT.

19 SO TIFFANY HAS CELL PHONE NUMBERS FOR BOTH OF YOU?

20 MR. SAMPSON: YES.

21 MS. JAYNE: YES.

22 THE COURT: OKAY. HOPEFULLY THEY WON'T HAVE
23 QUESTIONS RIGHT AWAY.

24 MR. SAMPSON: YOUR HONOR, ONE QUESTION ABOUT THE
25 POLLING.

1 IN MY EXPERIENCE, IT'S BEEN THAT THE ENTIRE VERDICT FORM
2 IS READ AND THEN EACH JUROR IS JUST ASKED, WAS THIS YOUR
3 VERDICT, OR DOES YOUR HONOR --

4 THE COURT: THAT'S NOT POLLING. THAT IS -- IF
5 POLLING IS DECLINED, THEN I CONFIRM THAT THE VERDICT AS READ.

6 BUT POLLING IS ASKING EACH JUROR HOW THEY VOTED ON EACH
7 COUNT.

8 MR. SAMPSON: YES, YOUR HONOR.

9 THE COURT: IT'S -- SO KEEP THAT IN MIND WHEN YOU
10 MAKE THE REQUEST. AND I -- IT'S THE RARE CASE THAT I DON'T
11 POLL THE JURY, BUT IT WOULD TAKE SOME TIME AS YOU CAN IMAGINE.

12 I'M GLAD TO DO IT. LIKE I SAID, I DO IT IN VIRTUALLY
13 EVERY CASE. BUT THE POLLING IS QUESTION BY QUESTION. I --
14 YEAH, I'M REQUIRED TO CONFIRM WITH THE JURORS THAT THE VERDICT
15 AS READ WAS CORRECT, BUT THAT'S NOT THE POLLING.

16 OKAY.

17 MS. JAYNE: THANK YOU. SO WE SHOULD WAIT FOR OUR
18 COPIES AND THEN BE SOMEWHERE?

19 THE COURT: PARDON?

20 MS. JAYNE: RIGHT NOW WE SHOULD WAIT HERE FOR THE
21 COPY?

22 THE COURT: I DON'T KNOW HOW LONG SHE'LL BE.

23 MS. JAYNE: OH, OKAY.

24 THE COURT: SO I WILL ASK HER TO MAKE A COPY FOR YOU,
25 AND I'LL HAVE IT HERE THE NEXT TIME YOU COME BACK.

1 MS. JAYNE: OH, OKAY. THAT'S FINE.

2 THE COURT: HOW'S THAT?

3 MS. JAYNE: THAT'S FINE.

4 THE COURT: UNTIL THERE'S A QUESTION, YOU WON'T NEED
5 TO FLIP THROUGH.

6 BUT I'LL HAVE HER MAKE TWO MORE COPIES.

7 ALL RIGHT. THANK YOU.

8 MS. JAYNE: THANK YOU.

9 MR. SAMPSON: THANK YOU, YOUR HONOR.

10 (RECESS PENDING THE JURY'S DELIBERATIONS.)

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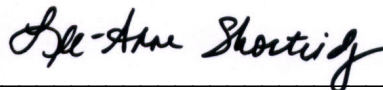
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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.



LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

DATED: APRIL 27, 2021